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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

In the Matter of:

MARK W. BOSWORTH and LISA A.
BOSWORTH, husband and wife;

STEVEN G. VAN CAMPEN and DIANE
V. VAN CAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L.
SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE
BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES,
LLC, and Arizona limited liability
company;

3 GRINGOS MEXICAN INVESTMENTS,
LLC, an Arizona limited liability company;

Respondents.

Docket No. S-20600-A-08-0340

**MOTION TO DISMISS OR IN THE
ALTERNATIVE TO STRIKE
EVIDENCE**

AND

**MOTION FOR SANCTIONS FOR
PROSECUTORIAL MISCONDUCT**

(Oral Argument Requested)

(Assigned to the Hon. Mark E. Stern)

Arizona Corporation Commission

DOCKETED

OCT 12 2011

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Pursuant to Rule 14-3-104, Corporation Commission Rules of Practice and Procedure, and the
United States and Arizona Constitutions, Respondents Mark and Lisa Bosworth, husband and wife
(collectively herein, "**Bosworths**" or "**Respondents**"), through their undersigned counsel, hereby
move to dismiss the hearing in its entirety and with prejudice as to the Bosworths as this matter has

1 proceeded in violation of their fundamental and Constitutional rights and they have been denied a
2 full and fair opportunity to participate as parties in this case. In the alternative, if the foregoing
3 request is denied, Respondents request that all evidence presented to date in this matter be stricken
4 and not considered as against Respondents given the procedural irregularities that have occurred.
5 Finally, Respondents move for sanctions against the State in this matter as a result of its
6 prosecutorial misconduct and failure to deal fairly and in good faith with Respondents. This Motion
7 is supported by the record of the proceedings and the accompanying Memorandum of Points and
8 Authorities.
9

10 Respectfully submitted this 11 day of October, 2011.

11
12 THE ADAMS LAW FIRM, PLLC

13 By 

14 Jeffrey R. Adams, Esq.

Attorney for Respondents Bosworth

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. Procedural History Relevant to this Motion.**

17 1. On July 3, 2008, and more than three years ago, the State filed its Notice of
18 Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for
19 Administrative Penalties, and Other Affirmative Action ("Notice") alleging certain statutory
20 violations by Respondents.
21

22 2. On February 23, 2010, the Commission accepted and entered an Order to Cease
23 and Desist, for Restitution, and for Administrative Penalties and Consent to Same as to Respondents
24 Van Campen ("Van Campen Consent") that was entered in this case, a copy of which is attached
25 hereto as Exhibit "1". Paragraph 8 of the Van Campen Consent provides as follows:
26

27 From on or about February 2006 to October 2007 in Maricopa County,
28 Arizona Respondents offered and sold investment contracts and
promissory notes issued by MBA and 3GMI with titles such as

1 “Investment Agreement,” “Promissory Note,” and “Receipt of
2 Investment Funds” (collectively the “Investments”). The investors who
3 purchased the Investments issued by 3GMI have been satisfied in full.
4 VAN CAMPEN offered and sold to five investors \$855,000 of the
5 Investments issued by MBA.

6 *Id.* at Exhibit “1”.

7 3. On June 3, 2010, and June 4, 2010, respectively, Respondents Mark Bosworth
8 and Lisa Bosworth signed a Consent to Enter Order for that certain Order to Cease and Desist, for
9 Restitution, and for Administrative Penalties and Consent to Same (“**Bosworth Consent**”), a copy
10 of which is attached hereto as Exhibit “2”. Paragraph 8 of the Bosworth Consent provides as
11 follows:

12 From on or about February 2006 to October 2007 in Maricopa County,
13 Arizona Respondents offered and sold to 38 investors \$4,533,594 of
14 investment contracts and promissory notes issued by MBA and 3GMI
15 with titles such as “Investment Agreement,” “Promissory Note,” and
16 “Receipt of Investment Funds” (collectively the “Investments”). Twenty
17 investors have been repaid \$1,775,551 and those investors who
18 purchased the Investments issued by 3GMI have been satisfied in full.

19 *Id.* at Exhibit “2”.

20 4. Paragraph 8 of both the the Van Campen Consent and the Bosworth Consent
21 state and provide that the investors who purchased “the Investments issued by 3GMI have been
22 satisfied in full.” *Id.* at Exhibit “1” and Exhibit “2”.

23 5. Between July 3, 2008, and June 2, 2010, the State had nearly two years to
24 conduct discovery and address the concerns of the State’s witnesses for purposes of negotiating the
25 terms and conditions of the Bosworth Consent to ensure that it was factually accurate.

26 6. On June 7, 2010, the hearing in this matter opened with this tribunal, the State
27 and Respondent Sargent each admitting, acknowledging and accepting the fact that the hearing was
28 proceeding without the participation of the Bosworths. On this point, Mr. Ludwig on behalf of the
State stated that the hearing was proceeding only as against Mr. Sargent. *See* June 9, 2010, hearing

1 transcript attached hereto as Exhibit "3" at 28:11 ("Mr. Sargent is the remaining respondent."); *see*
2 *also*, June 10, 2010, hearing transcript attached hereto as Exhibit "4" at 27:12-15 ("Five of the six
3 respondents that are part of what I'll call the Bosworth Enterprise have resolved their involvement
4 in this matter. Mike Sargent is all that remains,...."). Further, at the June 9, 2010, hearing the State
5 represented that the Bosworth Consent was going to be submitted for Commission approval at the
6 July, 2010, Commission meeting. *See* Exhibit "3" at 4:2-9.

8 7. On June 25, 2010, and June 26, 2010, Respondent Mark Bosworth testified in the
9 hearing in this matter as a State's witness. *See* transcripts of the June 25, 2010, and June 26, 2010,
10 hearing generally.

11 8. After Respondent Mark Bosworth testified as a State's witness, the State revoked and
12 withdrew the Bosworth Consent without submitting it to the Commission for a vote and approval.
13 The State allegedly revoked and withdrew the Bosworth Consent not because Respondents failed
14 to comply with the Bosworth Consent but because one of the State's witnesses testified contrary to
15 the language of the Bosworth Consent providing that investors who purchased "the Investments
16 issued by 3GMI have been satisfied in full." *See* August 26, 2010, hearing transcript attached as
17 Exhibit "5" at 858:13-19;¹ *see also*, August 23, 2010, Motion to Set Hearing.

19 9. After revoking and withdrawing the Bosworth Consent, on August 23, 2010, the State
20 filed a Motion to Set Hearing in which the State requested that a new hearing be set for purposes of
21 pursuing the claims against the Bosworths.
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26 What is interesting about this fact is that while the Bosworth Consent was revoked and withdrawn,
27 the Van Campen Consent was not despite the fact that both contained the same language as far as
28 the 3GMI investments and investors are concerned. Evidently, the State failed to confirm the
accuracy of the facts set forth in the Van Campen Consent and the Bosworth Consent before
seeking Commission approval of the Van Campen Consent or before negotiating the Bosworth
Consent with Respondents Bosworth and securing their signatures and agreements thereto.

1 10. On August 26, 2010, this tribunal acknowledged that the hearing in this matter has
2 proceeded without the Bosworths having had the opportunity to cross-examine witnesses or object
3 to exhibits and found the conduct of the State to have caused (i) a “real morass administratively” and
4 (ii) “a real problem from a question of due process....” See August 26, 2010, hearing transcript
5 (Exhibit “5”) at 851:6-13 and 853:10-13. In fact, this tribunal has acknowledged that it didn’t “know
6 where [the Bosworths were] at in relationship to the Fifth Amendment....” *Id.* at 853:16-17
7 (emphasis added).
8

9 11. With little to no time to react or respond to the State’s revocation and withdrawal of
10 the Bosworth Consent or the August 23, 2010, Motion to Set Hearing, the Bosworths, who were
11 unrepresented by counsel because they believed that had reached an agreement with the State, were
12 faced with having to choose between two unduly prejudicial options: (i) participate as respondents
13 in the current hearing in this matter in which the State has acknowledged that the Bosworths “has
14 [sic] not had the opportunity to participate” in the hearing up to that point in time and after the State
15 has merely a single witness left to call in its case in chief, *id.* at 850: 3-7 (emphasis added); *see also*,
16 August 25, 2010, hearing transcript attached as Exhibit “6” at 844:4-7; or (ii) participate in a
17 completely new hearing after the State has the benefit of (a) hearing Respondent Mark Bosworth
18 testify and (b) observing how its other witnesses would perform and testify and how they would
19 respond to cross-examination.
20
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22 12. Since the foregoing, Respondents have discovered that the Bosworth Consent was
23 never placed on the agenda for the July, 2010, Commission meeting for approval. See Exhibit “7”
24 attached hereto.
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1 **II. Legal Authorities.**

2 Respondents have filed this Motion (i) to ensure that they have done everything possible to
3 exhaust their remedies herein,² (ii) to allow this agency to correct the mistakes and remedy the
4 monumental irregularities that have occurred herein, which mistakes and irregularities include the
5 violation of Respondents' State and Federal constitutional rights, and (iii) to preserve and protect
6 their right to seek judicial intervention into the administrative process followed herein. *See United*
7 *Farm Workers of America, AFL-CIO v. Arizona Agricultural Employment Relations Board*, 669
8 F.2d 1249 (9th Cir.1982) ("[A] party must exhaust its remedies before it can obtain judicial review
9 of an agency decision. The purpose of the exhaustion doctrine is to allow the administrative agency
10 in question to exercise its expertise over the subject matter and to permit the agency an opportunity
11 to correct any mistakes that may have occurred during the proceeding, thus avoiding unnecessary
12 or premature judicial intervention into the administrative process.") (emphasis added) *citing Lloyd*
13 *C. Lockrem, Inc. v. United States*, 609 F.2d 940, 942 (9th Cir. 1979), *Weinberger v. Salfi*, 422 U.S.
14 749, 765, 95 S.Ct. 2457, 2466, 45 L.Ed.2d 522 (1975) and *SEC v. G. C. George Securities, Inc.*, 637
15 F.2d 685, 688 n.4 (9th Cir. 1981). And in this case, Respondents request dismissal, which this
16 tribunal may order in light of the actual and significant procedural and prejudicial irregularities that
17 have occurred with respect to the Bosworths. *See e.g., Pavlik v. Chinle Unified School Dist. No. 24*,
18 195 Ariz. 148, 985 P.2d 633 (Ct.App. 1999) (an administrative proceeding may be set aside where
19 there are irregularities in the proceedings themselves that cause actual prejudice to the accused)
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24 _____
25 ² Make no mistake, Respondents' willingness to follow the exhaustion requirement
26 should not be construed as an acknowledgment on their part that they are required to follow that
27 requirement. As this tribunal likely well knows, "[e]xhaustion of administrative remedies is not
28 required where the remedies are inadequate, inefficacious, or futile, where pursuit of them would
irreparably injure the plaintiff, or where the administrative proceedings themselves are void", which
we believe to be the case in these proceedings. *Id.* at *United Farm Workers* at 1253 (emphasis
added) *citing Aleknagik Natives Ltd. v. Andrus*, 648 F.2d 496, 499-500 (9th Cir. 1980).

1 citing *DeFries v. School Dist. No. 13 of Cochise County*, 116 Ariz. 83, 86, 567 P.2d 1212, 1215
2 (App.1977); *Barrow v. Arizona Bd. of Regents*, 158 Ariz. 71, 79, 761 P.2d 145, 153 (App.1988).

3 As recognized already by this tribunal, the Bosworths are entitled to the guarantees of certain
4 constitutional protections, which was also recognized in *Jones v. Indus. Comm'n*, 1 Ariz.App. 218,
5 222-23, 401 P.2d 172, 176-77 (1965), which held that the substantial rights of the parties to an
6 administrative proceeding must be preserved. It is axiomatic that no person shall be deprived of life,
7 liberty or property without due process of law be it in the judicial or administrative context. U.S.
8 Const. amend. XIV; Ariz. Const. art. II, § 4. In the context of this case, procedural due process
9 requires that a party be provided an opportunity to be heard at a meaningful time and in a meaningful
10 manner. *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971); *Emmett McLoughlin Realty, Inc. v. Pima*
11 *Cnty.*, 212 Ariz. 351, ¶ 17, 132 P.3d 290, 294 (App.2006) (due process requires party receive
12 adequate notice and have opportunity to be heard). Due process is satisfied if notice "is reasonably
13 calculated under all of the circumstances to apprise interested parties of the pendency of the action
14 and afford them the opportunity to present their objections." *Iphaar v. Indus. Comm'n*, 171 Ariz.
15 423, 426, 831 P.2d 422, 425 (App.1992) (emphasis added). The Due Process Clause of the
16 Fourteenth Amendment requires that "criminal defendants be afforded a meaningful opportunity to
17 present a complete defense." *California v. Trombetta*, 467 U.S. 479, 485 (1984) (emphasis added).
18 And the Confrontation Clause of the United States Constitution and article II, § 24 of the Arizona
19 Constitution guarantee an accused's right to confront "the witnesses against him." U.S. Const.
20 amend. VI; Ariz. Const. art. II, § 24. The foregoing principals are echoed in R14-3-104, which
21 states:
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26 At a hearing a party shall be entitled to enter an appearance, to introduce
27 evidence, examine and crossexamine witnesses, make arguments, and
28 generally participate in the conduct of the proceeding.

1 Taking the law set forth above into account, it is clear that this tribunal's finding that the
2 proceedings up to this juncture as they pertain to the Bosworths have been unusual at best and at
3 worst completely deprived the Bosworths of their fundamental and constitutional rights.
4 Accordingly, substantial and actual prejudice to the Bosworths exists. Therefore, we believe that
5 the only option left is dismissal.
6

7 Respondents filed this Motion also to ensure that this agency holds counsel for the State to
8 account for their failure to deal fairly and in good faith with them in connection with the Bosworth
9 Consent. Candidly, Respondents believe that the conduct of the State herein surrounding the
10 Bosworth Consent, its withdrawal and the State's use of Mr. Bosworth does not pass the smell-test
11 of appropriate prosecutorial conduct.
12

13 The Bosworth Consent in this matter is virtually identical to a plea agreement in a criminal
14 proceeding. Generally, we apply contract analysis to plea agreements. *Mejia v. Irwin*, 195 Ariz.
15 270, ¶ 12, 987 P.2d 756, 758 (App.1999). In interpreting a contract including a plea agreement or,
16 in this case, the Bosworth Consent, this tribunal's purpose "is to determine and enforce the parties'
17 intent." *US West Commc'ns, Inc. v. Ariz. Corp. Comm'n*, 185 Ariz. 277, 280, 915 P.2d 1232, 1235
18 (App.1996). As this tribunal must surely be aware, the covenant of good faith and fair dealing is
19 implied in every contract, which presumably includes administrative consent orders and criminal
20 plea agreements. *See Maleki v. Desert Palms Profl Props. L.L.C.*, 222 Ariz. 327, 333, ¶ 28, 214
21 P.3d 415, 421 (App.2009) ("In Arizona, a covenant of good faith and fair dealing is implied in every
22 contract.") Under this covenant, a party to the contract may not impair the right of other parties to
23 receive "the benefits that flow from their agreement or contractual relationship." *Kuehn v. Stanley*,
24 208 Ariz. 124, 132, ¶ 29, 91 P.3d 346, 354 (App.2004). Given the nature of consent orders, by
25 agreeing to them, one charged in an administrative proceedings such as this waives constitutionally
26 protected rights including the right to confront one's accusers and the privilege against
27
28

1 self-incrimination. *State v. Murdaugh*, 209 Ariz. 19, ¶ 33, 97 P.3d 844, 852 (2004), citing *Boykin*
2 *v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Therefore, the State's
3 obligation to deal fairly and in good faith with one accused of violating statutory mandates from
4 whom a consent is obtained, and this tribunal's obligation to ensure that the State deals fairly and
5 in good faith with an accused in securing a consent, are of paramount importance which raises the
6 issue of prosecutorial misconduct.

7
8 "[A] prosecutor has an obligation to seek justice, not merely a conviction, and must refrain
9 from using improper methods to obtain a conviction." *State v. Hughes*, 193 Ariz. 72, 80, 969 P.2d
10 1184, 1192 (1998) (emphasis added) citing *State v. Bible*, 175 Ariz. 549, 600, 858 P.2d 1152, 1203
11 (1993) and *Pool v. Superior Ct.*, 139 Ariz. 98, 103, 677 P.2d 261, 266 (1984). "[T]he
12 responsibilities of a prosecutor go beyond the duty to convict defendants. Pursuant to its role of
13 'minister of justice,' the prosecution has a duty to see that defendants receive a fair trial." *Id.* at
14 *Hughes* citing Ariz. R. Sup.Ct. 42, E.R. 3.8, comment; *State v. Cornell*, 179 Ariz. 314, 331, 878 P.2d
15 1352, 1369 (1994); and *State v. Rodriguez*, 192 Ariz. 58, 64, 961 P.2d 1006, 1012 (1998). "To
16 prevail on a claim of prosecutorial misconduct, a defendant must demonstrate that the prosecutor's
17 misconduct 'so infected the trial with unfairness as to make the resulting conviction a denial of due
18 process.'" *Id.* at *Hughes* quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868, 40
19 L.Ed.2d 431 (1974).

20
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22 In reviewing prosecutorial misconduct, the focus is on whether the misconduct affected the
23 proceedings in such a way as to deny the defendant a fair trial. See *State v. Atwood*, 171 Ariz. 576,
24 607, 832 P.2d 593, 624 (1992). Respondents acknowledge the law set forth in *State v. Armstrong*,
25 208 Ariz. 345, 93 P.3d 1061 (2004), that provides that a finding of prosecutorial misconduct or that
26 a prosecutor has engaged in bad faith "must be based primarily upon the objective facts and
27 circumstances shown in the record." *Id.* at 208 Ariz. at 352, 93 P.2d at 1068 quoting *Pool v.*
28

1 *Superior Court*, 139 Ariz. 98, 106-07, 677 P.2d 261, 269-70 (1984). However, in taking that
2 standard into consideration, Respondents believe that the objective facts and circumstances in this
3 case that are in the record and which are cited above, *supra*, demonstrate that the State has engaged
4 in prosecutorial misconduct and acted in bad faith for which the sanction of dismissal with prejudice
5 or declaration of a mistrial is warranted.

6 7 **III. Legal Argument.**

8 This tribunal has the sole authority at this time to gauge and determine whether (i) the
9 Bosworths' contractual and, more importantly, constitutional rights have been adequately protected
10 or irreparably infringed upon and (ii) whether these proceedings have provided the Bosworths with
11 a full and fair opportunity to defend themselves against the claims asserted by the State. Given the
12 legal authorities cited above and the principals set forth therein, Respondents believe that the facts
13 and findings of this tribunal already establish unequivocally that the Bosworths' contractual and
14 constitutional rights have been irreparably infringed upon and breached and that they have been
15 denied a full and fair opportunity to defend themselves. Accordingly, dismissal is appropriate.
16 Further, given the manner in which the State has proceeded, the Bosworths believe that dismissal
17 with prejudice is justified under the circumstances and that sanctions against the State are
18 appropriate.

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21 As set forth above, not until after the State had largely rested its case were the Bosworths
22 substantively made a part of the hearing. The Bosworths' lack of participation in the hearing was
23 a direct result of their reasonable and justifiable reliance upon the State's agreement to accept the
24 Bosworth Consent and their reasonable expectation that it would actually be presented to the
25 Commission for approval and entry. Further, Mr. Bosworth's willingness to voluntarily testify as
26 a witness for the State during its case in chief was in reliance on the State's agreement to the
27 Bosworth Consent and his promise that neither he nor his wife would be the subject of further action
28

1 by the State. Therefore, the covenant of good faith and fair dealing implied in the Bosworth Consent
2 mandated that the State was actually in a position to honor the Bosworth Consent before proceeding
3 with the hearing sans the participation of the Bosworths and, more importantly, before Mr. Bosworth
4 testified.

5
6 Notwithstanding the foregoing and through no fault on the part of Respondents, the State (i)
7 proceeded with the hearing sans the Bosworths' participation without verifying the accuracy of the
8 factual statements in the Bosworth Consent and (ii) allowed the Bosworths to rely upon the
9 protection of the Bosworth Consent and only after Mr. Bosworth testified did the State withdraw and
10 revoke the Bosworth Consent. The State's excuse for revoking and withdrawing the Bosworth
11 Consent is that the Bosworth Consent contained a factual inaccuracy – namely that the statement
12 therein that investors who purchased “the Investments issued by 3GMI have been satisfied in full”
13 was untrue. According to the State, that error was allegedly revealed by one of the State's investor
14 witnesses during the hearing. However, Respondents Bosworth believe that this tribunal should take
15 that assertion with a significant grain of salt and consider it with a great amount of skepticism.
16

17 As noted above, between the date the Notice was filed and the date the Bosworth Consent was
18 signed by the Bosworths, the State had nearly two years to ensure that the factual statements in the
19 Bosworth Consent were accurate. During that two year period of time, the State had an abundance
20 of time to confer with its investor witnesses to ensure that the factual statements contained within
21 the Bosworth Consent were accurate. In signing the Bosworth Consent, the Bosworths relied on the
22 State's assertion that it had conducted its discovery and due diligence prior to preparing the
23 Bosworth Consent the proof for which included the State's and the Commission's approval,
24 execution and entry of the Van Campen Consent several months earlier that contained an
25 identical factual statement. The State had more than two years to work and communicate with its
26 investor witnesses to ascertain the factual substance of their anticipated testimony during the hearing
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28

1 in this matter and before Mr. Bosworth testified. And the State had the benefit of knowing its
2 investor witness's testimony during the hearing before it called Mr. Bosworth to testify.

3 While negotiating both the Van Campen Consent and Bosworth Consent, the State was
4 required to know the facts the Van Campen and Bosworth Respondents were relying upon in
5 deciding to agree to their respective consents, especially since both contained virtually identical
6 factual statements. On this point, *Coy v. Fields*, 200 Ariz. 442, 27 P.3d 799 (Ct.App.) is pertinent.
7 Therein, the Court dealt with a plea agreement that purported to impose a sentence greater than the
8 sentence allowed by law. In finding that the State was liable for knowing state law when negotiating
9 plea agreements and responsible for errors in the plea agreement, the Court of Appeals relied upon
10 *State v. Patience*, 944 P.2d 381 (Utah App. 1997), and held as follows:
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13 In refusing the state's request to rescind the plea agreement, the *Patience* court noted
14 that, as here, the defendant had neither breached the agreement nor withdrawn from nor
15 modified the agreement, conditions which generally would have permitted the state to
16 withdraw. Moreover, the court held that rescission was inappropriate even under a
17 contract law analysis:

18 [A] party may not rescind an agreement based on mutual mistake where
19 that party bears the risk of mistake. See 17A Am.Jur.2d Contracts § 215
20 (1991). In this case, we conclude the State bore the risk of the mistake
21 as to the law in effect at the time the parties entered into the plea
22 agreement. The State is generally in the better position to know the
23 correct law ... and the State must be deemed to know the law it is
24 enforcing. Indeed, it is the State's law, duly enacted by its legislative
25 branch, that is in issue. The State must be charged with knowledge of its
26 own legislative enactments and, in that sense, cannot be said to have
27 been mistaken about the governing statute in effect when it agreed to the
28 plea arrangement....

... Under these circumstances, we refuse to relieve the State of what it
now considers a bad bargain where the plea agreement was the result of
uninduced mistake as to the current provisions of Utah statute.

We conclude that the State may not rescind the plea agreement in this
case based on mutual mistake.

Coy at 200 Ariz. at 446, 27 P.3d at 803 quoting *Patience*, 944 P.2d at 387-88.

1 Assuming the State was diligent in its discovery efforts and exercised proper due diligence in
2 negotiating and preparing both the Van Campen Consent and several months later the Bosworth
3 Consent, the State was in the best position to know the true facts and there is no valid or legitimate
4 reason why the State either did not know or should not have known about the status of the 3GMI
5 investor's satisfaction long before commencing with this hearing or before Mr. Bosworth testified.
6 In other words, in this case the State must bear the burden of the risk of mistake in the Bosworth
7 Consent and it should not now be rewarded for what the State "now considers a bad bargain where
8 the [Bosworth Consent] was the result of uninduced mistake as to the [facts surrounding the 3GMI
9 investors' satisfaction]. *Id.* at Coy.

11 More importantly, we do know with absolute certainty that the State had the opportunity to
12 revoke and withdraw the Bosworth Consent on the basis of the alleged factual error before Mr.
13 Bosworth testified. Yet despite the foregoing, the State waited until after Mr. Bosworth testified to
14 revoke and withdraw the Bosworth Consent. Given the foregoing, it is difficult to construe the
15 foregoing chain of events as anything other than a calculated, dishonest and self-serving effort by
16 the State to ensure a particular outcome – namely, securing Mr. Bosworth's testimony at the hearing
17 without invoking or asserting any of his constitutionally protected and guaranteed rights.

19 By any measurable standard, the State's conduct falls outside all bounds of decency,
20 reasonableness, good faith and fundamental fairness for which the sanction should be severe. The
21 State should not now be permitted to use its improper conduct to further pursue the Bosworths. The
22 State and the Bosworths had an agreement with which the Bosworths complied in all respects. In
23 doing so, Respondents and specifically Mr. Bosworth surrendered his and his wife's right to "have
24 their day in court" and instead he testified in these proceedings without the constitutional protections
25 that otherwise would have been guaranteed to him and his wife. Had Mr. Bosworth been informed
26 of the State's intent to revoke and withdraw the Bosworth Consent due to an investor witness's

1 testimony that was presented prior to him testifying, he never would have testified much less
2 voluntarily surrendered his and his wife's fundamental rights.

3 With respect to the Bosworths' substantive and constitutional rights, we have the following
4 comments. Because Respondents were not participants in the hearing in this matter until after the
5 State had completed its case in chief, Respondents have lost the opportunity to cross-examine any
6 of the State's witnesses or challenge any of the evidence that already has been admitted. They also
7 have lost the opportunity to observe the proceedings thus far resulting in the lost opportunity to plan
8 and develop their defense strategy in light of the testimony and evidence that has been presented and
9 admitted. And by testifying at a time when he would otherwise have had the right to exercise his
10 constitutional rights, Mr. Bosworth has provided the State with testimony that it can now use against
11 the Bosworths because, even if it does not specifically rely upon Mr. Bosworth's testimony directly,
12 the State will have the benefit of his testimony for purposes of (i) preparing their opposition to
13 Respondents' defense, (ii) cross-examining Respondents' witnesses and (iii) challenging
14 Respondents' evidence and none of which opportunities would exist but for Mr. Bosworth testifying
15 in reliance on the protections offered by the Bosworth Consent and his reasonable expectation that
16 neither he nor his wife were parties to these proceedings.³ Clearly the foregoing represents actual,
17 significant and insurmountable prejudices and constitutional violations that no remedial measure can
18 resolve. In other words, these proceedings have been tainted in such a way that this tribunal cannot
19 unring the bell so as to fully restore the Bosworths' fundamental, substantive and constitutional
20 rights. Accordingly, this matter must be dismissed, with prejudice, as to the Bosworths.
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27 ³ Put simply, the State cannot unhear what Mr. Bosworth said during the hearing.
28 Thus, even sealing of the transcript containing Mr. Bosworth's testimony would provide an
substantively ineffective remedy.

1 A separate and new hearing also does not provide a sufficient remedy to the Bosworths. As
2 an initial comment, the Bosworths have been the subject of these proceedings for over three years.
3 A second hearing as against the Bosworths would further delay these proceedings that may
4 ultimately result in the loss of evidence and/or the unavailability of witnesses. As this tribunal is
5 aware, the State is required to proceed with cases such as this in a prompt manner. Forcing
6 Respondents Bosworth to endure a second hearing and the ultimate delays that would result would
7 deprive them of the right to have the allegations against them pursued expeditiously, especially since
8 they signed the Bosworth Consent more than a year ago and, in reliance upon it, they stopped all
9 efforts to prepare for a hearing and lost out on their opportunity to conduct substantive discovery
10 prior to a hearing.
11

12
13 More importantly, a fair and impartial hearing requires that all parties attend and participate
14 in the hearing and present their respective cases based upon the evidence that each has available on
15 the date or dates of the hearing. If this tribunal were to order a second hearing, the State would be
16 given a significant advantage that would flow directly from what could best be described as a pre-
17 screening of the testimony and evidence of not only its witnesses and evidence but of the Bosworths'
18 defense based upon the State's participation in the direct and cross-examination of Mr. Bosworth
19 during the present hearing. As should be obvious, while in a second hearing the transcript for Mr.
20 Bosworth's testimony could be sealed by this tribunal, the State would still enjoy the benefit of
21 hearing Mr. Bosworth testify in this proceeding. As a result, the State would have the distinct
22 opportunity to change, modify and alter their case in chief as well as its opposition to the Bosworths'
23 defense based upon what happened herein, which would be an advantage not likewise enjoyed by
24 the Bosworths because they have not participated in the present hearing save for Mr. Bosworth
25 testifying for the State. Imagine if you will what would have happened in the O.J. Simpson trial if
26 the State was given a pre-screening of Christopher Darden's fiasco of having Mr. Simpson try on
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28

1 the glove, or hearing the cross-examination of Detective Mark Furman as it pertained to his racial
2 bias. Had that occurred, at the actual trial Mr. Simpson never would have been given the opportunity
3 to try the glove on, Detective Furman's racial bias would have been dealt with adequately on direct
4 examination and one of the most famous closing argument quotes in the history of American
5 jurisprudence, "If it does not fit, you must acquit!", would never have been coined. Given the fact
6 that judicial proceedings must be conducted so as to ensure fundamental fairness to all parties,
7 allowing the State to enjoy such an advantage would be fundamentally unfair to the Bosworths.
8 Thus, dismissal of this matter with prejudice as to the Bosworths is the only fair and just result.

9
10 Further, a hearing involving multiple respondents allows the tribunal to evaluate, balance and
11 assess each of the respondents' cases as well as the prosecution's case against each to reach a
12 conclusion as to each respondent's likelihood of commission of wrongdoing, competing exposure
13 and the apportionment of liability and restitution. Had the Bosworths been participants in this
14 hearing, their case and defenses would have been measured together with and against Respondent
15 Sargent as would the State's prosecution of its claims against each. A second hearing would not
16 avail Respondents of that advantage rendering a second hearing fundamentally unfair to the
17
18 Bosworths.

19
20 Finally, this tribunal has already recognized that these proceedings as they pertain to the
21 Bosworths have been thrown into chaos not because of anything done or not done by the Bosworths
22 but due to the actions, or inaction as the case may be, of the State. Respondents believe that this
23 tribunal should be extremely troubled by the conduct of the State for two reasons.

24 First, the State has absolutely no valid excuse for (i) agreeing to the Bosworth Consent or (ii)
25 proceeding with this hearing without first knowing the facts surrounding whether the 3GMI investors
26 had been fully satisfied by the collective group of respondents. That is the case because that fact
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1 pertains to an essential element of the State's case in chief— namely the amount of restitution being
2 sought.

3 Second, after the hearing in this case commenced without the participation of the Bosworths,
4 the State had the opportunity to revoke and withdraw the Bosworth Consent before Mr. Bosworth
5 testified. That is the case because at a minimum the State knew that the Bosworth Consent contained
6 an alleged factual inaccuracy after their investor witness testified, which was before Mr. Bosworth
7 testified. However, armed with that knowledge, the State kept silent about the factual inaccuracy
8 of the Bosworth Consent until after Mr. Bosworth's testimony was complete.

9
10 The foregoing sequence of events supports Respondents' belief that the State's conduct was
11 calculated, intentional and designed to ensure that Mr. Bosworth testified without invoking or
12 asserting his fundamental rights to due process, confrontation and to be free from self-incrimination.
13 The Bosworths's contention that the State's conduct was calculated and intentional is bolstered by
14 the fact that the Bosworth Consent was never placed on the agenda for the July 8, 2010, Commission
15 meeting for approval as the State had promised. Clearly, the State has employed the classic use of
16 "bait and switch" tactics, which were defined by a sister jurisdiction as "an alluring but insincere
17 offer to sell a product or service which the advertiser in truth does not intend or want to sell" and
18 which this tribunal should not condone. *Williams v. Bruno Appliance & Furniture Mart, Inc.*, 379
19 N.E.2d 52, 54 (Ill.App. 1977) *quoting* the Federal Trade Commission Act, 16 C.F.R. § 238 (1978).
20 Thus, while the State's conduct very well may have benefitted the State in its case against Mr.
21 Sargent, it has completely stripped the Bosworths (i) from the benefit of the very protections
22 guaranteed to them by the United States and Arizona Constitutions, (ii) from their right to participate
23 in a hearing in which they are a named respondent guaranteed by R14-3-104, and (iii) of the
24 guarantee that these proceedings would be conducted in a fair and just manner from which the State
25 should not benefit.
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1 Given the foregoing, a second hearing in this matter could not legally proceed against the
2 Bosworths because double jeopardy has attached. Ordering that the present hearing be discontinued
3 as to the Bosworths and then ordering them to be subject to a second hearing would be tantamount
4 to declaring a mistrial. And in this context, given the prosecutorial misconduct that has occurred
5 herein, the law is clear. The Arizona courts have extended double jeopardy protection based on
6 prosecutorial misconduct to cases in which the defendant moves for mistrial on those grounds. *See*
7 *Pool v. Superior Court*, 139 Ariz. 98, 108-09, 677 P.2d 261, 271-72 (1984) (holding that “jeopardy
8 attaches under art. 2, § 10 of the Arizona Constitution when a mistrial is granted” and other specified
9 conditions are met); *see also State v. Jorgenson*, 198 Ariz. 390, 392, ¶ 7, 10 P.3d 1177, 1179 (2000)
10 (extending *Pool* to cases in which the mistrial motion was meritorious and should have been
11 granted). The Double Jeopardy Clause protects a criminal defendant’s “right to be free from multiple
12 trials.” *Jorgenson*, 198 Ariz. 390, ¶ 6, 10 P.3d at 1178. Although a “defendant ordinarily waives that
13 right when he seeks a new trial because of error in the original trial, the clause applies when the need
14 for a second trial is brought about by the state’s egregiously intentional, improper conduct.”⁴ *Id.*

15 Respondents acknowledge that the law in Arizona provides that prosecutorial misconduct
16 sufficient to implicate double jeopardy “[can]not merely [be] the result of legal error, negligence,
17 mistake, or insignificant impropriety,” but rather must rise to the level of “intentional conduct which
18 the prosecutor knows to be improper and prejudicial, and which he pursues for any improper
19 purpose.” *Pool*, 139 Ariz. at 108-09, 677 P.2d at 271-72. However, in this case, intentional and
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24
25 ⁴ We suspect that the possibility of a mistrial based upon prosecutorial misconduct is
26 precisely the reason that the State filed its Motion for New Hearing as to the Bosworths at a time the
27 State knew that the Bosworths were unrepresented and likely would not know that the ramifications
28 of consenting to a new trial would be the waiver of their rights under the Double Jeopardy Clause.
While the prosecution stated during the hearing after the Bosworth Consent had been withdrawn
following Mr. Bosworth’s testimony that it was suddenly concerned with protecting his due process
rights, we believe that the State was looking out for its own interests, not those of the Bosworths.

1 improper conduct actually occurred. Herein, the State had Mr. Bosworth testify under the protection
2 of the Bosworth Consent while knowing that one of its previous witnesses testified in a manner that
3 would result in the ultimate withdrawal and revocation of the Bosworth Consent. In having Mr.
4 Bosworth testify under the mistaken notion that he was protected by the Bosworth Consent and
5 thereby waiving his fundamental and constitutional protections at a time that the State knew he was
6 not protected by the Bosworth Consent, the State knowingly and intentionally caused substantial
7 prejudice to the Bosworths. As a result, jeopardy attached thereby precluding a second or new
8 hearing. The foregoing also establishes that this tribunal should appropriately sanction the State for
9 its improper prosecutorial misconduct.
10

11 Based upon the foregoing, the only proper remedy at this juncture as this case pertains to the
12 Bosworths is dismissal with prejudice. In the alternative, should this tribunal deny the foregoing
13 request, the only fair and just manner of proceeding with the current hearing would be to strike all
14 evidence and testimony from consideration by the tribunal as to the Bosworths. Further, given the
15 prosecutorial misconduct that has occurred, the Bosworths request sanctions against the State that
16 this tribunal deems appropriate under the circumstances.
17

18 **IV. Conclusion.**
19

20 Based on the foregoing, this matter as it pertains to Respondents Bosworth should be
21 dismissed with prejudice or a mistrial declared. In the event this tribunal denies that request, the
22 only remedy that could ensure some semblance of fairness would be to strike and exclude from
23 consideration by this tribunal as against the Bosworths any of the testimony and evidence offered
24 and admitted up to this point in time. Finally, given the prosecutorial misconduct that has occurred,
25 sanctions deemed appropriate by this tribunal are requested.
26
27
28

1 Respectfully submitted this 11 day of October, 2011.

2 THE ADAMS LAW FIRM, PLLC

3 By 

4 Jeffrey R. Adams, Esq.

5 Attorney for Respondents Bosworth

6
7 Original of the foregoing sent via
8 First Class Mail and electronic
9 mail this 11 day of October, 2011 to:

10 Docket Control
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, Arizona 85007

14 Copy of the foregoing sent via
15 First Class Mail and electronic
16 mail this 11 day of October, 2011 to:

17 Mark E. Stern
18 Administrative Law Judge
19 Hearing Division
20 Arizona Corporation Commission
21 1200 West Washington
22 Phoenix, Arizona 85007

23 Wendy L. Coy, Esq.
24 Arizona Corporation Commission
25 Securities Division
26 1300 West Washington
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12 Phoenix, Arizona 85004
13 Attorneys for Respondents Van Campen

14 By  _____

EXHIBIT "1"

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Arizona Corporation Commission

DOCKETED

FEB 23 2010

DOCKETED BY

nr

In the matter of

MARK W. BOSWORTH and LISA A.
BOSWORTH, husband and wife;

STEPHEN G. VAN CAMPEN and DIANE
V. VAN CAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L.
SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE
BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES,
L.L.C., an Arizona limited liability
company;

3 GRINGOS MEXICAN INVESTMENTS,
L.L.C., an Arizona limited liability
company;

Respondents.

DOCKET NO. S-20600A-08-0340

DECISION NO. 71496

ORDER TO CEASE AND DESIST, FOR
RESTITUTION, AND FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME BY:

STEPHEN G. VAN CAMPEN and DIANE V.
VAN CAMPEN

Respondents STEPHEN G. VAN CAMPEN and DIANE V. VAN CAMPEN elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, for Restitution, and for Administrative Penalties ("Order"). Respondents STEPHEN G. VAN CAMPEN and DIANE V. VAN CAMPEN admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit only for purposes of this proceeding and any other administrative proceeding before the Commission the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1. MARK BOSWORTH & ASSOCIATES, L.L.C. ("MBA") is an Arizona limited liability company doing business in Maricopa County, Arizona. MBA is the holder of a real estate license issued by the Arizona Department of Real Estate.

2. 3 GRINGOS MEXICAN INVESTMENTS, L.L.C. ("3GMI") is an Arizona limited liability company doing business in Maricopa County, Arizona.

3. STEPHEN G. VAN CAMPEN ("VAN CAMPEN") is an individual last known to reside in Maricopa County, Arizona. VAN CAMPEN is a member of 3GMI. VAN CAMPEN is the holder of a real estate license issued by the Arizona Department of Real Estate and was at relevant times a "salesperson" of MBA.

4. DIANE V. VAN CAMPEN was at all relevant times the spouse of VAN CAMPEN and may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

5. At all relevant times, VAN CAMPEN acted for his own benefit and for the benefit or in furtherance of the marital community.

6. VAN CAMPEN, MBA, and 3GMI may be referred to collectively as "Respondents."

7. At all relevant times, VAN CAMPEN was not registered with the Commission as a securities dealer or salesman.

8. From on or about February 2006 to October 2007 in Maricopa County, Arizona, Respondents offered and sold investment contracts and promissory notes issued by MBA and 3GMI with titles such as "Investment Agreement," "Promissory Note," and "Receipt of Investment Funds" (collectively the "Investments"). The investors who purchased the Investments issued by 3GMI have been satisfied in full. VAN CAMPEN offered and sold to five investors \$855,000 of the Investments issued by MBA.

9. Respondents solicited investors through Arizona newspaper advertisements, websites, Arizona seminars, and van trips to Puerto Peñasco, Mexico ("Rocky Point").

10. Respondents represented the Investments to offerees and investors as follows: investor money would be pooled and used by Respondents to purchase commercial buildings under construction, including a condominium development project in Rocky Point ("Rocky Point condos"), then the buildings would be leased by Respondents to future tenants until sold by Respondents, along with the Rocky Point condos, when completed, for substantial gains.

8 11. Respondents represented that the Investments would return to investors 100 percent
9 of their initial investment plus a 30 to 100 percent return.

10 12. Respondents did not purchase (and later sell) the buildings or Rocky Point condos
11 and the investors received neither the 30 to 100 percent return nor their initial investment, despite
12 having requested same from Respondents.

II.

CONCLUSIONS OF LAW

15 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
16 Arizona Constitution and the Securities Act.

17 2. VAN CAMPEN offered or sold securities within or from Arizona, within the
18 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

19 3. VAN CAMPEN violated A.R.S. § 44-1841 by offering or selling securities that
20 were neither registered nor exempt from registration.

21 4. VAN CAMPEN violated A.R.S. § 44-1842 by offering or selling securities while
22 neither registered as a dealer or salesman nor exempt from registration.

23 5. VAN CAMPEN'S conduct is grounds for a cease and desist order pursuant to
24 A.R.S. § 44-2032.

25 6. VAN CAMPEN'S conduct is grounds for an order of restitution pursuant to A.R.S.
26 § 44-2032.

7. VAN CAMPEN'S conduct is grounds for administrative penalties under A.R.S. § 44-2036.

8. VAN CAMPEN acted for the benefit of the marital community and, pursuant to A.R.S. §§ 25-214 and 25-215, this order of restitution and administrative penalties is a debt of the community.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the consent of VAN CAMPEN and Respondent Spouse to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that VAN CAMPEN and any of his agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that VAN CAMPEN and Respondent Spouse comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that VAN CAMPEN, individually, and the marital community of VAN CAMPEN and Respondent Spouse, jointly and severally shall, jointly and severally with any other Respondent against whom the Commission enters an order under Docket No. S-20600A-08-0340, pay restitution to the Commission in the principal amount of \$855,000. Any principal amount outstanding shall accrue interest at the rate of 10 percent per annum from the date of purchase until paid in full. Interest in the amount of \$298,293.15 has accrued from the date of purchase to the date of this Order. Payment shall be made in full on the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.

1 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
2 records of the Commission. Any restitution funds that the Commission cannot disburse because an
3 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
4 investor because the investor is deceased and the Commission cannot reasonably identify and
5 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
6 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
7 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
8 disburse shall be transferred to the general fund of the state of Arizona.

9 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that VAN CAMPEN,
10 individually, and the marital community of VAN CAMPEN and Respondent Spouse, jointly and
11 severally, shall pay an administrative penalty in the amount of \$50,000. Payment shall be made to
12 the "State of Arizona." If the restitution obligation specified above is paid in full by March 31,
13 2011, the administrative penalty will be reduced to \$25,000. Any amount outstanding shall accrue
14 interest at the rate of 10 percent per annum from the date of this Order until paid in full. The
15 payment obligations for these administrative penalties shall be subordinate to any restitution
16 obligations ordered herein and shall become immediately due and payable only after restitution
17 payments have been paid in full or upon VAN CAMPEN'S or Respondent Spouse's default with
18 respect to VAN CAMPEN'S and Respondent Spouse's restitution obligations.

19 For purposes of this Order, a bankruptcy filing by VAN CAMPEN or Respondent Spouse
20 shall be an act of default. If VAN CAMPEN or Respondent Spouse does not comply with this
21 Order, any outstanding balance may be deemed in default and shall be immediately due and
22 payable.

23 IT IS FURTHER ORDERED that, if VAN CAMPEN or Respondent Spouse fails to
24 comply with this order, the Commission may bring further legal proceedings against VAN
25 CAMPEN or Respondent Spouse, including application to the superior court for an order of
26 contempt.

1 IT IS FURTHER ORDERED that no finding of fact or conclusion of law contained in this
2 Order shall be deemed binding against any Respondent under this Docket Number who has not
3 consented to the entry of this Order.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

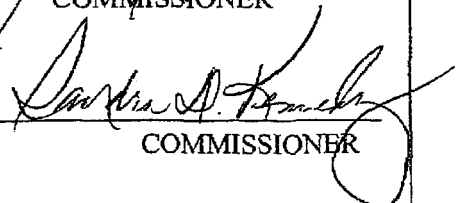
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6
7 
8 CHAIRMAN


COMMISSIONER

9
10 
COMMISSIONER


COMMISSIONER


COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation
14 Commission, have hereunto set my hand and caused the
15 official seal of the Commission to be affixed at the
16 Capitol, in the City of Phoenix, this 23rd day of
17 February, 2010.

18 
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

19
20 DISSENT

21
22 DISSENT

23
24 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

25 (ASL)

EXHIBIT "2"

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

In the matter of

MARK W. BOSWORTH and LISA A.
BOSWORTH, husband and wife;

STEPHEN G. VAN CAMPEN and DIANE
V. VAN CAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L.
SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE
BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES,
L.L.C., an Arizona limited liability
company;

3 GRINGOS MEXICAN INVESTMENTS,
L.L.C., an Arizona limited liability
company;

Respondents.

DOCKET NO. S-20600A-08-0340

DECISION NO. _____

**ORDER TO CEASE AND DESIST, FOR
RESTITUTION, AND FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME BY:**

**MARK W. BOSWORTH and LISA A.
BOSWORTH**

MARK BOSWORTH & ASSOCIATES, L.L.C.

**3 GRINGOS MEXICAN INVESTMENTS,
L.L.C.**

Respondents MARK W. BOSWORTH; LISA A. BOSWORTH; MARK BOSWORTH &
ASSOCIATES, L.L.C.; and, 3 GRINGOS MEXICAN INVESTMENTS, L.L.C. elect to
permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act
of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And
Desist, for Restitution, and for Administrative Penalties ("Order"). Respondents MARK W.
BOSWORTH; LISA A. BOSWORTH; MARK BOSWORTH & ASSOCIATES, L.L.C.; and, 3
GRINGOS MEXICAN INVESTMENTS, L.L.C. admit the jurisdiction of the Arizona Corporation

Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1. MARK BOSWORTH & ASSOCIATES, L.L.C. ("MBA") is an Arizona limited liability company that, at all relevant times, was doing business in Maricopa County, Arizona. MBA is the holder of a real estate license issued by the Arizona Department of Real Estate.

2. 3 GRINGOS MEXICAN INVESTMENTS, L.L.C. ("3GMI") is an Arizona limited liability company that, at all relevant times, was doing business in Maricopa County, Arizona.

3. MARK W. BOSWORTH ("BOSWORTH") is an individual last known to reside in Maricopa County, Arizona. BOSWORTH is the manager of MBA and a member of 3GMI.

4. LISA A. BOSWORTH was at all relevant times the spouse of BOSWORTH and may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

5. At all relevant times, BOSWORTH acted for his own benefit and for the benefit or in furtherance of the marital community.

6. BOSWORTH, MBA, and 3GMI may be referred to collectively as "Respondents."

7. At all relevant times, Respondents were not registered with the Commission as securities dealers or salesmen.

8. From on or about February 2006 to October 2007 in Maricopa County, Arizona, Respondents offered and sold to 38 investors \$4,533,594 of investment contracts and promissory notes issued by MBA and 3GMI with titles such as "Investment Agreement, "Promissory Note," and "Receipt of Investment Funds" (collectively the "Investments"). Twenty investors have been repaid \$1,775,551 and those investors who purchased the Investments issued by 3GMI have been satisfied in full.

9. Respondents solicited investors through Arizona newspaper advertisements, websites, Arizona seminars, and van trips to Puerto Peñasco, Mexico ("Rocky Point").

10. Respondents represented the Investments to some of the investors as follows: investor money would be pooled and used by Respondents to purchase commercial buildings under construction, including a condominium development project in Rocky Point ("Rocky Point condos"), then the buildings would be sold by Respondents, along with the Rocky Point condos, when completed, for substantial gains.

11. Respondents represented to some of the investors that the Investments would return to investors 100 percent of their initial investment plus a 30 to 100 percent return, but they did not disclose all financial information regarding Respondents and the Investments, including the assets and liabilities of MBA and 3GMI and any additional, lender financing potentially needed by MBA and 3GMI to purchase the buildings and Rocky Point condos.

12. Respondents did not purchase (and later sell) all of the building projects and some investors received neither the 30 to 100 percent return nor their initial investment, despite having requested same from Respondents.

13. Respondents did not disclose all risks associated with the Investments, including that the Investments were not all secured by real estate.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondents offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

1 4. Respondents violated A.R.S. § 44-1842 by offering or selling securities while
2 neither registered as dealers or salesmen nor exempt from registration.

3 5. Respondents violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
4 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, or (c)
5 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
6 or deceit. Respondents' conduct includes, but is not limited to, the following:

7 a. Failing to disclose to some offerees and investors the potential need for
8 additional, lender financing by MBA and 3GMI to purchase the buildings and Rocky Point condos;
9 and,

10 b. Failing to disclose all risks associated with the Investments, including that
11 the Investments were not all secured by real estate.

12 6. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S.
13 § 44-2032.

14 7. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
15 2032.

16 8. Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-
17 2036.

18 9. BOSWORTH acted for the benefit of the marital community and, pursuant to
19 A.R.S. §§ 25-214 and 25-215, this order of restitution and administrative penalties is a debt of the
20 community, but not the sole and separate obligation of Respondent Spouse.

21 **III.**

22 **ORDER**

23 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the consent of
24 Respondents and Respondent Spouse to the entry of this Order, attached and incorporated by
25 reference, the Commission finds that the following relief is appropriate, in the public interest, and
26 necessary for the protection of investors:

1 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents and any of their agents,
2 employees, successors and assigns, permanently cease and desist from violating the Securities Act.

3 IT IS FURTHER ORDERED that Respondents and Respondent Spouse comply with the
4 attached Consent to Entry of Order.

5 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that MBA and BOSWORTH,
6 individually, and the marital community of BOSWORTH and Respondent Spouse, jointly and
7 severally shall, jointly and severally with any other Respondents against whom the Commission
8 enters an order under Docket No. S-20600A-08-0340, pay restitution to the Commission in the
9 principal amount of \$2,758,043. Any principal amount outstanding shall accrue interest at the rate
10 of 10 percent per annum from the date of purchase until paid in full. Interest in the amount of
11 \$1,103,531.94 has accrued from the date of purchase to the date of this Order. Payment shall be
12 made in full on the date of this Order. Payment shall be made to the "State of Arizona" to be
13 placed in an interest-bearing account controlled by the Commission.

14 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
15 records of the Commission. Any restitution funds that the Commission cannot disburse because an
16 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
17 investor because the investor is deceased and the Commission cannot reasonably identify and
18 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
19 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
20 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
21 disburse shall be transferred to the general fund of the state of Arizona.

22 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents,
23 individually, and the marital community of BOSWORTH and Respondent Spouse, jointly and
24 severally, shall pay an administrative penalty in the amount of \$150,000. Payment shall be made
25 to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law. The
26 payment obligations for these administrative penalties shall be subordinate to any restitution

1 obligations ordered herein and shall become immediately due and payable only after restitution
2 payments have been paid in full or upon Respondents' or Respondent Spouse's default with respect
3 to Respondents' and Respondent Spouse's restitution obligations.

4 For purposes of this Order, a bankruptcy filing by any of the Respondents or Respondent
5 Spouse shall be an act of default.¹ Nothing in this Order is intended to prejudice the rights of
6 Respondents and Respondent Spouse under the U.S. Bankruptcy Code. If any Respondent or
7 Respondent Spouse does not comply with this Order, any outstanding balance may be deemed in
8 default and shall be immediately due and payable.

9 IT IS FURTHER ORDERED that, if any Respondent or Respondent Spouse fails to comply
10 with this order, the Commission may bring further legal proceedings against that Respondent or
11 Respondent Spouse, including application to the superior court for an order of contempt.

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25 ¹ The Division acknowledges that Mark W. Bosworth and Lisa A. Bosworth filed for bankruptcy protection under
26 Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court, District of Arizona, Case No. 2:08-bk-03098-SSC, on March 25, 2008 ("Bosworth Bankruptcy"). The Bosworth Bankruptcy is pending. Any subsequent bankruptcy petitions filed by Mark W. Bosworth and/or Lisa A. Bosworth following a discharge or dismissal of the Bosworth Bankruptcy shall be viewed as a default.

1 IT IS FURTHER ORDERED that no finding of fact or conclusion of law contained in this
2 Order shall be deemed binding against any Respondent under this Docket Number who has not
3 consented to the entry of this Order.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION
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7

8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation
14 Commission, have hereunto set my hand and caused the
15 official seal of the Commission to be affixed at the
16 Capitol, in the City of Phoenix, this _____ day of
17 _____, 2010.

18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 DISSENT

21
22 DISSENT

23
24 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
25 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

26 (ASL)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents and Respondent Spouse admit the jurisdiction of the Commission over
3 the subject matter of this proceeding. Respondents and Respondent Spouse acknowledge that they
4 have been fully advised of their right to a hearing to present evidence and call witnesses and they
5 knowingly and voluntarily waive any and all rights to a hearing before the Commission and all
6 other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
7 Administrative Code. Respondents and Respondent Spouse acknowledge that this Order To Cease
8 And Desist, for Restitution, and for Administrative Penalties ("Order") constitutes a valid final
9 order of the Commission.

10 2. Respondents and Respondent Spouse knowingly and voluntarily waive any right
11 under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or
12 extraordinary relief resulting from the entry of this Order.

13 3. Respondents and Respondent Spouse acknowledge and agree that this Order is
14 entered into freely and voluntarily and that no promise was made or coercion used to induce such
15 entry.

16 4. Respondents and Respondent Spouse understand and acknowledge that they have a
17 right to seek counsel regarding this Order and that they have had the opportunity to seek counsel
18 prior to signing this Order. Respondents acknowledge and agree that, despite the foregoing, they
19 freely and voluntarily waive any and all right to consult or obtain counsel prior to signing this
20 Order.

21 5. Respondents and Respondent Spouse neither admit nor deny the Findings of Fact
22 and Conclusions of Law contained in this Order. Respondents and Respondent Spouse agree that
23 they shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this
24 Order in any present or future proceeding in which the Commission is a party.

25 6. By consenting to the entry of this Order, Respondents and Respondent Spouse agree
26 not to take any action or to make, or permit to be made, any public statement denying, directly or

1 indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that
2 this Order is without factual basis. Respondents and Respondent Spouse will undertake steps
3 necessary to assure that all of their agents and employees understand and comply with this
4 agreement.

5 7. While this Order settles this administrative matter between Respondents,
6 Respondent Spouse, and the Commission, it is understood by Respondents and Respondent Spouse
7 that this Order does not preclude the Commission from instituting other administrative or civil
8 proceedings based on violations that are not addressed by this Order.

9 8. Respondents and Respondent Spouse understand that this Order does not preclude
10 the Commission from referring this matter to any governmental agency for administrative, civil, or
11 criminal proceedings that may be related to the matters addressed by this Order.

12 9. Respondents and Respondent Spouse understand that this Order does not preclude
13 any other agency or officer of the state of Arizona or its subdivisions from instituting
14 administrative, civil, or criminal proceedings that may be related to matters addressed by this
15 Order.

16 10. Respondents agree that they will not sell any securities in or from Arizona without
17 being properly registered in Arizona as a dealer or salesman, or exempt from such registration;
18 Respondents will not sell any securities in or from Arizona unless the securities are registered in
19 Arizona or exempt from registration; and, Respondents will not transact business in Arizona as an
20 investment adviser or an investment adviser representative unless properly licensed in Arizona or
21 exempt from licensure.

22 11. Respondents and Respondent Spouse agree that they will continue to cooperate with
23 the Securities Division by, including but not limited to, providing complete and accurate testimony
24 at any hearing in this matter and cooperating with the state of Arizona in any related investigation
25 or any other matters arising from the activities described in this Order.

26

1 12. BOSWORTH and Respondent Spouse acknowledge that any restitution or penalties
2 imposed by this Order are obligations of BOSWORTH as well as the marital community, but not
3 the sole and separate obligation of Respondent Spouse.

4 13. Respondents and Respondent Spouse consent to the entry of this Order and agree to
5 be fully bound by its terms and conditions.

6 14. Respondents and Respondent Spouse acknowledge and understand that, if they fail
7 to comply with the provisions of the order and this consent, the Commission may bring further
8 legal proceedings against them, including application to the superior court for an order of
9 contempt.

10 15. Respondents and Respondent Spouse understand that default shall render them
11 liable to the Commission for its costs of collection and interest at the maximum legal rate.

12 16. Respondents and Respondent Spouse agree and understand that, if they fail to make
13 any payment as required in the Order, any outstanding balance shall be in default and shall be
14 immediately due and payable without notice or demand. Respondents and Respondent Spouse
15 agree and understand that acceptance of any partial or late payment by the Commission is not a
16 waiver of default by the Commission.

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17. BOSWORTH represents that he is the manager of MBA and a member of 3GMI and that he has been authorized by MBA and 3GMI to enter into this Order for and on behalf of them.

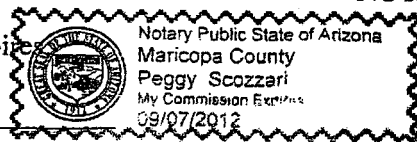

MARK W. BOSWORTH


STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN TO BEFORE me this 03 day of JUNE, 2010.

NOTARY PUBLIC

My commission expires:



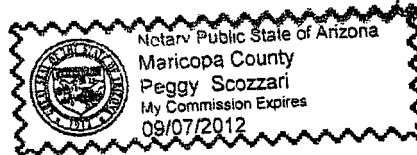

LISA A. BOSWORTH

STATE OF ARIZONA)
) ss
County of Maricopa)

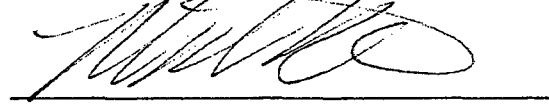
SUBSCRIBED AND SWORN TO BEFORE me this 04 day of JUNE, 2010.

NOTARY PUBLIC

My commission expires:



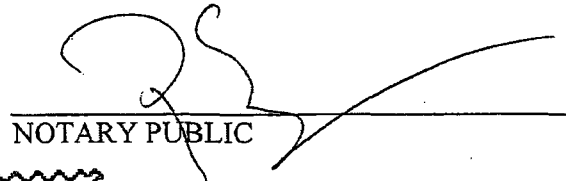
MARK BOSWORTH & ASSOCIATES, L.L.C.



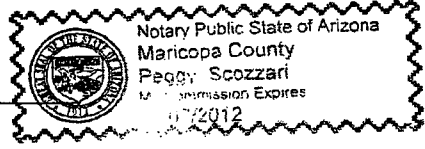
By: Mark W. Bosworth
Its: Manager

STATE OF ARIZONA)
) ss
County of Maricopa)


SUBSCRIBED AND SWORN TO BEFORE me this 03 day of JUNE, 2010.


NOTARY PUBLIC

My commission expires:



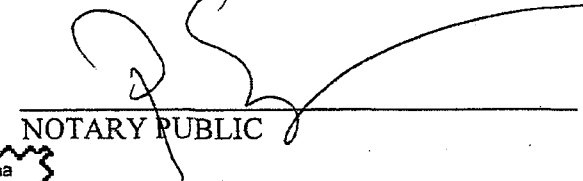
3 GRINGOS MEXICAN INVESTMENTS, L.L.C.



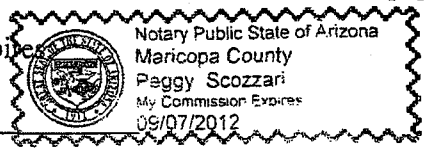
By: Mark W. Bosworth
Its: Member

STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN TO BEFORE me this 03 day of JUNE, 2010.


NOTARY PUBLIC

My commission expires:



1 SERVICE LIST FOR: In the Matter of Mark W. Bosworth, et al.

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Mark W. Bosworth
Lisa A. Bosworth
Mark Bosworth & Associates, LLC
3 Gringos Mexican Investments, LLC
18094 N. 100th St.
Scottsdale, AZ 85255

Michael J. Sargent
Peggy L. Sargent
c/o Paul J. Roshka, Esq.
ROSHKA DeWULF & PATTEN, PLC
One Arizona Center
400 E. Van Buren St., Ste. 800
Phoenix, AZ 85004

EXHIBIT "3"

1 Bosworth.

2 MR. LUDWIG: That is correct. The Division has
3 entered into a tentative settlement with the Bosworths,
4 and that is, of course, subject to approval by the
5 Commissioners at the next regularly scheduled Open
6 Meeting.

7 ALJ STERN: Is that this week, or is that going
8 to be on the one in July?

9 MR. LUDWIG: July.

10 ALJ STERN: And what's the status? I guess we
11 got a phone call from your office, Mr. Gardner and
12 Mr. Sabo. What's going on with the Sargents and the
13 Division at this point?

14 MR. GARDNER: Your Honor, the Division and the
15 Sargents are in settlement discussions right now; and what
16 has been agreed between the parties -- Mr. Ludwig, please
17 correct me if I'm wrong -- is that the parties would like
18 to seek a continuance of the hearing at this time until
19 Wednesday morning, whether that's a 9:30 or 10:00 start
20 time, to pursue conclusion of settlement of this case with
21 respect to the Sargents.

22 We are ready to proceed for hearing, but we
23 would like to use this time -- the parties would like to
24 use this time to see if we can short-circuit this process
25 and see if the hearing is even necessary.

1 previously, and that is when a hearing involves four
2 respondents and the Division is impressed upon by
3 Administrative Law Judges to narrow the witnesses, those
4 have to be carefully selected to touch on involvement of
5 all of the respondents. So as the respondents get
6 whittled down through consents and there's a desire to
7 narrow, shorten, you know, all of these administrative
8 proceeding concepts of narrowing and shortening, certainly
9 attentive to due process but make them more relaxed, that
10 is how Mr. Ebenhack was developed as a witness, is that
11 Mr. Sargent is the remaining respondent, and can speak in
12 a much more narrow fashion about Mr. Sargent's
13 involvement. Again, I would like to reiterate that we've
14 removed many witnesses.

15 ALJ STERN: Well, you still have five investor
16 witnesses. You're calling at least two other respondents.

17 MR. LUDWIG: Yes, I acknowledge that it's still
18 a large number. It's just much less than the 15 that we
19 previously had when we had to go against --

20 ALJ STERN: Well, you're down to ten --
21 witnesses, that is. I mean the custodian of records and
22 any witnesses necessary for rebuttal and any witnesses
23 listed by respondents, I don't really count too much.

24 But the situation is such that I think under the
25 circumstances, you know, I can give them a little bit of

EXHIBIT "4"

1 MR. LUDWIG: No, no, that's it. Unless you
2 would like me to lay the legal authority for the exception
3 of Mike.

4 ALJ STERN: No, your investigator can stay.
5 Any other --

6 MR. GARDNER: No, Your Honor. I mean the rule
7 mentions that an officer or employee can be designated to
8 attend. It looks like we've got a few here, but we're
9 fine with that, Your Honor.

10 ALJ STERN: Okay. Opening statement,
11 Mr. Ludwig.

12 MR. LUDWIG: Thank you. Five of the six
13 respondents that are part of what I'll call the Bosworth
14 Enterprise have resolved their involvement in this matter.
15 Mike Sargent is all that remains, and make no mistake, the
16 Division will prove that he offered and sold securities in
17 the form of investment contracts involving real estate and
18 that he committed fraud in connection with those offers
19 and sales.

20 The Bosworth Enterprise is made up of the four
21 individual respondents and a number of companies,
22 including Mark Bosworth & Associates, the Mark Bosworth
23 Companies, and 3 Gringos Mexican Investments.

24 Mr. Sargent is a member of 3 Gringos. He was
25 represented as the president of the Mark Bosworth

EXHIBIT "5"

1 not be a problem also in any proceeding you bring
2 against him, since he voluntarily appeared in this
3 proceeding --

4 MR. BOSWORTH: Your Honor.

5 ALJ STERN: Just a minute.

6 And now you're proposing a new hearing,
7 essentially because, number one, he never really
8 participated much in the last proc -- in the phase of
9 hearing we have already had in this proceeding to
10 cross-examine witnesses, et cetera, to object to
11 exhibits. This creates a real morass administratively
12 or hearing-wise, and I have never seen anything like
13 this.

14 Mr. Bosworth, you're affected by this, so what's
15 your position on it, of course?

16 MR. BOSWORTH: As I testified in court, I did
17 have an agreement. My wife signed and executed it. The
18 State agrees we followed through with everything we
19 committed to.

20 Apparently, there was testimony well before my
21 testimony that brought about some changes, I believe,
22 about the land in Mexico. After the bulk of my
23 testimony was done, I was pulled aside in the hallway
24 and told, the specific wording was, I didn't have a deal
25 anymore, and they wanted to renegotiate a new deal.

EXHIBIT "6"

1 ALJ STERN: Okay. Done with this witness?

2 MR. LUDWIG: Yes.

3 ALJ STERN: Thank you, Mr. Brokaw.

4 We will now figure out what we're going to do.

5 You have one more witness you want to call, right?

6 Mr. Sargent?

7 MR. LUDWIG: Correct.

8 ALJ STERN: Let's go off the record. We'll

9 figure out where we're at here.

10 (Off the record from 4:02 to 4:21 p.m.)

11 ALJ STERN: Returning to the record just

12 briefly, the parties and the presiding ALJ have had a

13 discussion off the record regarding availability of dates

14 and witnesses, et cetera, and it appears that August 26

15 and August 27 would be selected at this time for future

16 proceedings, with possibly a date in September. With that

17 we are in recess. Thank you.

18 MR. SABO: Thank you.

19 MR. LUDWIG: Thank you.

20 (The hearing was recessed at 4:21 p.m.)

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EXHIBIT "7"

**ARIZONA CORPORATION COMMISSION
AGENDA**

Open Meeting Date – Thursday, July 8, – 10:00 a.m.

Securities

1. Kyle Schmierer, Individually and doing Business as Amadin (Notice of Opportunity) (S-20651A-09-0029) Opinion and Order
2. Kenneth Williams and Jane Doe Williams, husband and wife (S-20743A-10-0211) Proposed Order to Cease and Desist, Administrative Penalties and Consent to Same by: Respondent Kenneth Williams (d/b/a “KWD Commercial Construction Services”)